

## **REMARKS**

This application has been reviewed in light of the FINAL REJECTION mailed May 14, 2009. Reconsideration of this application in view of the below remarks is respectfully requested. Claims 1 – 7, 10 – 14, 16 and 18 – 21 are pending in the application, Claims 1 – 6 having been previously withdrawn from further consideration. Of elected Claims 7, 10 – 14, 16 and 18 – 21, Claims 7, 10, 12 – 14 and 17 are in independent form. By the present amendment, Claims 7, 10, 12 – 14, 16 and 19 – 21 are amended. No new subject matter is introduced into the disclosure by way of the present amendment

### **I. Rejection of Claims 7, 10 – 14, 16, 18 and 21 Under 35 U.S.C. § 112, Second Paragraph**

Claims 7, 10 – 14, 16, 18 and 21 under 35 U.S.C. § 112, second paragraph as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Initially, Claim 16 depends from previously canceled Claim 15, therefore Claim 16 has been amended to depend from independent Claim 14.

Additionally, Claims 7, 10 – 14, 16, 18 and 21 are rejected because, according to the present Office Action, the phrasing: “the extracorporeal device selects an antenna from the plurality of antennas in a preferable transmitting and receiving state in accordance with the communication state detected by the detecting device” in Claim 7 is unclear with regards to how detecting which of two communication states a plurality of antennas are in leads a skilled artisan to judge which of the antennas is in a preferable transmitting and receiving state.

However, amended Claim 7, reciting: “...the extracorporeal device selects an antenna from the plurality of antennas in a preferable transmitting and receiving state in accordance with the data on the receiving strength received by the detecting device...” is believed to adequately

clarify how the antennas are selected. Accordingly, Applicants respectfully request withdrawal of the rejection of Claims 7, 10 – 14, 16, 18 and 21 under 35 U.S.C. § 112, second paragraph.

## **II. Rejection of Claims 7, 10 – 14, 16 and 18 – 21 Under 35 U.S.C. § 102(a)**

Claims 7, 10 – 14, 16 and 18 – 21 are rejected under 35 USC 102(a), as anticipated by US Publication No. 2003/0085994 to Fujita, et al. (hereinafter, “Fujita ‘994”).

Initially, it is noted that Claims 7, 10 – 14 and 18 – 21 have been amended by way of the present paper to recite that the antennas are arranged along a running direction of a digestive tract. The recited features in Claims 7, 10 – 14 and 18 – 21 are fully supported by the disclosure as originally filed, including for example FIG. 9 and page 27, lines 14 – 23.

Fujita ‘994 fails to teach arranging the plurality of antennas sequentially along the running direction of the digestive tract. Rather, Fujita ‘994 discloses antennas arranged in an ‘X’ configuration.

It is well-settled by the Courts that “[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company, et al., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir., 1984).

Therefore, as demonstrated above, because Fujita ‘994 does not disclose each and every element recited in the present claims, Applicants respectfully submit that the rejection has been obviated. Accordingly, Applicants respectfully request withdrawal of the rejection with respect to Claims 7, 10 – 14, 16 and 18 – 21 under 35 U.S.C. § 102(a).

## **CONCLUSIONS**

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 7, 10 – 14, 16 and 18 – 21 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,

/Thomas Spinelli/  
Thomas Spinelli  
Registration No. 39,533

SCULLY, SCOTT, MURPHY & PRESSER, P.C.  
400 Garden City Plaza - Ste. 300  
Garden City, New York 11530  
(516) 742-4343

TS/DAT:ab